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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
OCTOBER 24, 2005

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
MICHAEL REIS
KATHLEEN LOCEY
KIMBERLY GANN
HOWARD BROWN

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: LEN MCDONALD
STEPHEN RIVERA

REGULAR MEETING

MR. KANE: I'd like to call the October 24, 2005 Town
of New Windsor Zoning Board of Appeals meeting to
order.

APPROVAL OF MINUTES OF SEPTEMBER 26, 2005

MR. KANE: Motion to accept the minutes of the
September 26, 2005 meeting as written?

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MS. GANN: So moved.

MS. LOCEY: I'll second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

PRELIMINARY_MEETINGS:

RICHARD_EVANS_(05-63)

MR. KANE: Request for 8 ft. 6 inches rear yard setback for proposed rear deck at 2415 Settler's Ridge.

Mr. Richard Evans appeared before the board for this proposal.

MR. KANE: Basically, so everybody knows, the Town of New Windsor has a two step process, we hold a preliminary meeting so we can get an idea of what you want to do and make sure that we have enough information to make a decision on your request. So we go through the preliminary meeting to get all of that information then by law we have to do everything in a public meeting to make the approval. So we'll go through a preliminary, you'll do the exact same thing when you come back for the public hearing, if we have any requests we may need things like pictures. Tell us what you want to do, sir.

MR. EVANS: I want to build a proposed deck 30 x 16, I guess I need a variance because it's like a little bit close to the property line.

MR. KANE: You say 30 x 16, 30 on the length of the house and 16 coming out?

MR. EVANS: Coming out.

MR. KANE: Normal size deck?

MR. EVANS: Yes.

MR. KANE: Some questions may seem a little ridiculous as you look at your property but we have to ask them anyway. Cutting down any trees or substantial vegetation in the building of the deck?

MR. EVANS: No.

MR. KANE: Creating any water hazards or runoff in the building of the deck?

MR. EVANS: No.

MR. KANE: Are there any easements running through the area where you're going to build the deck?

MR. EVANS: No.

MR. KANE: The deck itself is replacing the set of steps that are coming off of the double doors on the back of the house?

MR. EVANS: Yes.

MR. KANE: So you would consider building the deck to be a safety issue making that entrance exit to the back of your home more safe too?

MR. EVANS: Yes.

MR. KANE: And are there other decks in your area that are similar in size and nature to the deck that you have, right?

MR. EVANS: Yes.

MR. KANE: Any other questions? Accept a motion.

MS. GANN: I'll make a motion we set up Richard Evans for request for eight foot six inch rear yard setback for proposed rear deck at 2415 Settler's Ridge.

MR. REIS: Second it.

ROLL CALL

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MS. GANN AYE
MS. LOCEY AYE
MR. BROWN AYE
MR. REIS AYE
MR. KANE AYE

MR. KANE: Just follow the directions right on there
and we'll see you at the public hearing. Thank you.

MR. EVANS: Thank you.

DANE_LEROY_(05-64)

MR. KANE: Request for 10 ft. side yard setback for existing 10 ft. by 12 ft. shed which is also located over a drainage easement at 2 Spring Rock Road.

Mr. Dane Leroy appeared before the board for this proposal.

MR. KANE: You heard my little speech before?

MR. LEROY: Yes.

MR. KANE: Tell us what you want to do.

MR. LEROY: It's an existing shed, I just want to be able to leave it there, it's on, partially on the easement but the easement has old drainage lines from the old I believe it's from the old water tank that pipe comes through so it's not being used for anything anymore and I have cleared all the brush a long time ago, I just have a shed sitting partially on that and partially on my property.

MR. KANE: How long has the shed been in existence?

MR. LEROY: Two years.

MR. KANE: And any complaints about the shed formally or informally?

MR. LEROY: No.

MR. KANE: Create any water hazards or runoffs in the placement of the shed?

MR. LEROY: No, water runs off both sides.

MR. KANE: Cutting down trees, substantial vegetation?

MR. LEROY: No.

MR. KANE: Shed's similar to other sheds in your neighborhood?

MR. LEROY: Yes.

MR. KANE: The biggest question I have is the, how do you handle the shed going over the easement, he's still subject that if somebody needed to get through they could go through the shed if they wanted to?

MR. LEROY: Yeah, I would move it.

MR. KRIEGER: The zoning board can neither enhance or reduce that, they can't do anything about it and so whoever has the easement rights continues to have those rights notwithstanding what this board does one way or the other.

MR. KANE: Even though we approve the shed to stay there you're still subject to anything.

MR. LEROY: Write up some papers, I'll move it at my cost.

MR. KANE: We've got it all on tape.

MR. LEROY: Okay.

MS. LOCEY: Who does have the easement?

MR. LEROY: Town, I guess.

MR. KRIEGER: How did you know that there's a drainage easement there?

MR. LEROY: You can see the pipe in the pictures going across the stream.

MR. KRIEGER: Other than--

MR. LEROY: Frank Lisi came out there and he told me what it was, I knew there was an area, the other guys property's over here.

MR. KANE: Do we know who has the easement?

MR. BABCOCK: His survey shows it's a sewer easement, not a drainage easement.

MR. LEROY: That's possible, I'm not sure what it is but I know it's some kind of easement.

MR. BABCOCK: Ten foot wide sewer easement, see filed map 1848.

MR. KANE: Yeah, I see it, okay, so even though it, even if we grant that variance right there I think we'll probably we could do something along with the life of that particular shed that's right there but again it won't void their rights that the holder of the easement has. Did I say that right?

MR. KRIEGER: Yes.

MR. LEROY: If they need it moved, I'll move it.

MR. KANE: We've got enough pictures. Does anybody need any other information?

MR. REIS: Accept a motion?

MR. KANE: I will accept a motion.

MR. REIS: I make a motion we set up Mr. Dane Leroy for a public hearing for his request for ten foot side yard setback for existing 10 x 12 shed at 2 Spring Rock Road.

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MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

HARRY_TOROMANIDES_(05-65)

MR. KANE: Request for 12 ft. 6 inch variance for proposed second floor addition that will project closer to the road than original house at 10 Hickory Avenue.

Mr. Harry Toromanides appeared before the board for this proposal.

MR. KANE: Tell us what you want to do, sir.

MR. TOROMANIDES: As you stated, there's a proposed second floor addition with it being two feet closer than the original structure but I guess the 12 feet number is from where current zoning has it, now the line has to be I guess it's 45 feet back, currently 35 feet back, we're just asking to go two feet closer on the second floor.

MR. KANE: Mike on the original house that would be like grandfathered in?

MR. BABCOCK: Well--

MR. KANE: So this would just fix that, right?

MR. BABCOCK: I would say that on the original house Mr. Chairman not knowing when it was built but I could check that, verify that there probably wasn't any requirement for front yard setback or it was much less than what it is today.

MR. KANE: Okay.

MR. TOROMANIDES: And--

MR. BABCOCK: It was built in 1946 which is prior to zoning.

MR. KANE: Again, some questions may not make sense but

we have to ask them all. Cutting down any trees or substantial vegetation?

MR. TOROMANIDES: No.

MR. KANE: Creating any water hazards or runoffs?

MR. TOROMANIDES: No.

MR. KANE: With the top of the home sticking two feet out into the front, does that project closer to the road than any other home on that side of the street?

MR. TOROMANIDES: I couldn't definitively say that any other home, certainly the two adjoining us, I took pictures of both, they're both closer by 10 or 12 feet and we would still be eight or ten feet in back of them from the front of their house.

MR. KANE: Thank you. Any further questions? I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing for Harry Toromanides for his requested 12 foot six inch variance for a proposed second floor addition that will project closer to the road than the original house at 10 Hickory Avenue.

MR. BROWN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

JULIAN_PAYNE_(05-66)

MR. KANE: Request for 4.2 ft. side yard setback and 12.3 ft. total side yard setback for proposed addition at 30 Birchwood Drive.

Mr. Jay Klein appeared before the board for this proposal.

MR. KLEIN: My name is Jay Klein, the architect. What we propose is a 12 foot addition on the existing home and the previous zoning was 15 foot side yard now it's 20 foot with the 12 foot addition that we propose encroaches in this 20 foot minimum side yard zoning previous would allow it. What we what, the Paynes want to do is add 12 feet to put a garage on the lower level and add to their master bedroom and the same house of the lines remain from the house, the roof line stays the same, everything stays the same in the rear yard, just the 12 foot addition on the rear yard.

MR. KANE: Cutting down any trees, substantial vegetation in the building of that?

MR. PAYNE: No.

MR. KANE: Creating any water hazards or runoffs?

MR. PAYNE: No.

MR. KANE: With the addition onto the home, does that keep the home similar to size and nature of other homes in the neighborhood?

MR. PAYNE: Yes.

MR. KANE: Any easements going through the area where the addition is going to be put?

MR. PAYNE: No.

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MR. KANE: Any further questions?

MR. REIS: Accept a motion?

MR. KANE: Yes, I will.

MR. REIS: Make a motion that we set up Mr. Julian Payne for a public hearing for request for 4.2 foot side yard setback and 12.3 foot total side yard setback for proposed addition at 30 Birchwood Drive.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

LEWIS_SIGN_COMPANY_(05-67)

MR. KANE: Request for 160 square foot area and 4 ft. height variance for freestanding sign at 59 Windsor Highway.

Ms. Charlene DiNunzio appeared before the board for this proposal.

MS. DINUNZIO: Do you have pictures I think?

MR. KANE: Yes.

MS. DINUNZIO: But the top of the sign would be 4 foot by 9 foot which would be 36 feet and then there are three sets of 4 x 3 panels which would be another 36 feet overall, so it would be 72 per side, I think we're allowed 64 without the variance if I'm correct. Right?

MR. KANE: I'll check with the mathematician at the table.

MR. REIS: She means 36 inches.

MS. DINUNZIO: Thirty-six square feet and then 36 on the top would make 72, so we need the 72 on the one side and the I believe it would be 8 feet for the side that's over here.

MR. KANE: And the signs that are going to be going into the place are going to meet all of the standards?

MS. DINUNZIO: Definitely, our height is a little low, I think we're 19 feet for traffic to give enough clearance but basically most of that is header.

MR. KANE: Okay, can you, I'm just trying to see can you show us where the placement of the sign is going to be on the property?

MS. DINUNZIO: There should be some other pictures, yeah, where the old sign is in that box area.

MR. KANE: On the other side?

MS. DINUNZIO: Yes.

MR. KANE: Placement of the sign you would say would probably be about 15, 18 feet off the road?

MS. DINUNZIO: At least, yeah, you're going to be, to be at least a car length ahead so you can see before pulling out.

MR. KANE: This is replacing an existing sign that Devitt's had there previously?

MS. DINUNZIO: Yes.

MR. KANE: Is the sign illuminated in any fashion?

MS. DINUNZIO: I believe it's aluminum so I don't think, so it might be, I don't--

MR. KANE: We would want to check that for the public hearing, make sure on the illumination and if there's illumination what kind of illumination it is.

MS. DINUNZIO: Aluminum with vinyl so I mean I'm confused because I don't know how you light up aluminum.

MR. REIS: Maybe exterior lit.

MR. KANE: That information we'll need for the public hearing.

MS. DINUNZIO: I'll bring you a sample, okay.

MR. KANE: See that's exactly why we go through

preliminaries because if you didn't have everything here.

MS. DINUNZIO: Yeah and I'm confused on that.

MR. KANE: That's the only thing we'd need, just check one other thing on your pictures.

MR. BABCOCK: These are the three signs you're talking about.

MS. DINUNZIO: No, those were the building signs that we have permits for, those are the wall signs, this is the pylon.

MR. KANE: This whole thing right here, Mike, do you have the referral sheet?

MR. BABCOCK: I'm sure.

MR. KANE: Is that the only sign that you're going to need for this project?

MS. DINUNZIO: We did get approval for those three and I'm sure as more tenants come in they may need small wall signs to go over the entrances but that would be it.

MR. KANE: Okay, everything else seems to be in order.

MS. DINUNZIO: I'll check on that because I'm confused myself.

MR. KANE: The other thing I would like is just a clear picture showing the traffic on 32 coming from the sign although I know personally that it's not going to inhibit vision, I'd like to have that in for the record.

MS. DINUNZIO: Sure.

MR. KANE: I'll accept a motion unless somebody has other questions.

MR. BROWN: Make a motion--

MR. BABCOCK: Well, are you counting this sign here?

MS. DINUNZIO: Yes, I am, that's 9 feet by 4 feet.

MR. KANE: Square off.

MS. DINUNZIO: That's 36.

MR. BABCOCK: This is a lot more than four foot, ma'am, from here to here.

MS. DINUNZIO: That's just the way they did it in the rendering but it's only 4 feet high and this is 9 feet wide.

MR. BABCOCK: It's 4 foot from here to here?

MS. DINUNZIO: Yes and this is 4 feet or maybe I'm wrong, maybe this is 9 and this is 4 cause these are 3 across so this is six inches on each side would be 4, right 4, 9, 36 and then--

MR. BABCOCK: Are you counting these three?

MS. DINUNZIO: Well, these are doubles.

MR. BABCOCK: Are you counting these three though?

MS. DINUNZIO: Yeah, cause this is 4 x 3 for two panels and we have three panels it says on the--

MR. BABCOCK: Do you have 6 or 3 panels?

MS. DINUNZIO: We have three panels divided in half to

make six panels, this is vinyl in here, okay, you can see.

MR. BABCOCK: Right now you're right now on this sign you're showing three signs?

MS. DINUNZIO: Yes.

MR. BABCOCK: But you'll be showing six?

MS. DINUNZIO: Right but they're three, it's sections cut in half to make six signs, there's going to be a line, a vinyl line.

MR. KANE: Doesn't matter to us, there's six signs, I don't care how many sections there are.

MR. BABCOCK: We're taking the entire sign.

MR. KANE: Right, I know how you do it, we just want to make sure we have the right numbers for when we put it in the paper and go to the public hearing.

MS. DINUNZIO: It's 80 square feet.

MS. MASON: We can verify that.

MS. DINUNZIO: Don't want me to get you those samples?

MS. MASON: I'll talk to you about that.

MR. KANE: We had one other question, there's no easements or right-of-ways where the sign's going?

MS. DINUNZIO: No.

MR. KANE: I'll accept a motion.

MR. BROWN: That we set up Lewis Sign Company for Straus Family Capital for a public hearing request for

160 square foot area and 4 foot height variance for freestanding sign at 59 Windsor Highway.

MS. LOCEY: I'll second it.

MR. KANE: One quick question I did forget, the height of the sign is similar to other signs that are in that specific area? Gallagher's is a little further down.

MS. DINUNZIO: Right and I have pictures I will bring at the hearing.

MR. KANE: Roll call.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

R. MELNIK, JR. & M. MANDEL (05-68)

MR. KANE: Request for interpretation and/or variance for a two family dwelling or a dwelling with two kitchens at 298 Lake Road.

Ms. M. Mandel appeared before the board for this proposal.

MR. KANE: Tell us what you want to do.

MS. MANDEL: We'd like to on the main downstairs level add a small addition and put in a second small kitchen so that an elderly family member can be comfortable there. Currently there's as you can see there's a sun room that's over it, it's just gravel and, you know, open space right now.

MR. KANE: You're going to be actually just building and enclosing in under the sun room and deck?

MS. MANDEL: Yes, I'm putting in a slab and framing it in.

MR. KANE: The obvious question is not cutting down any trees, substantial vegetation?

MS. MANDEL: No.

MR. KANE: Creating any water hazards, runoffs?

MS. MANDEL: Nothing.

MR. KANE: Any easements run through that area with the deck?

MS. MANDEL: No.

MR. KANE: Since it's going to be, is there going to be a separate entrance?

MS. MANDEL: Yes, we're going to make a separate entrance in the back.

MR. KANE: Will there be an internal entrance from the house down to it?

MS. MANDEL: Yes.

MR. KANE: That's easily accessible from both ends?

MS. MANDEL: Well, just coming downstairs there will be a door and another door that enters that other, the other area so it's easily accessible, yeah.

MR. KANE: And the intent is not to use this as a two-family home, an interpretation as a single?

MS. MANDEL: Never, right, one family.

MR. KANE: Gas and electric will be maintained on one meter?

MS. MANDEL: Yes.

MR. KANE: And in a public hearing we'll ask you those questions again to get it on record and it's just like giving your oath that that's what's going on.

MS. MANDEL: Absolutely.

MR. KANE: Okay, any other questions? I'll accept a motion.

MR. REIS: Make a motion that we set up Melnik and Mandel for their requested interpretation for variance for a two-family dwelling or a dwelling with two kitchens at 298 Lake Road.

MS. GANN: Second it.

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ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

PUBLIC HEARINGS:

MT._AIRY_ESTATES_(05-55)

Audry Scott, Esq. appeared before the board for this proposal.

MR. KANE: Request for 17 ft. rear yard setback for proposed single family house at 2029 Independence Drive.

MS. SCOTT: Good evening, my name is Audry Scott, I'm from the firm of Jacobowitz & Gubits on behalf of Mt. Airy Estates. Mr. Rosenzweig usually appears before you but he had a holiday today so that's why I'm here. If I understand your process, you have already had a preliminary meeting so is there any further information that you need from me?

MR. KANE: Actually, you have to go through the whole thing again in the public, it's just like it never happened, tell us exactly what you want to do.

MS. SCOTT: Well, this is the first of two similar rear yard area variance requests, I understand that the rear yard is 30 foot requirement and it would be a 17 foot encroachment resulting in a 13 foot rear yard. One corner of the house because of the nature of the lot it's a triangular shaped lot therefore one corner of the house will be encroaching into what has been determined to be the rear yard in this case and that's basically it in a nutshell.

MR. KRIEGER: Triangular shape for the record on a corner?

MS. SCOTT: Yes, corner lot.

MR. KRIEGER: Was this originally part of a subdivision?

MS. SCOTT: Yes, I understand it to be.

MR. KRIEGER: Do you know how many units were in the subdivision?

MS. SCOTT: That I don't know. Was that provided in the preliminary hearing?

MR. BABCOCK: Approximately 500, Mr. Chairman, 504, I think was the number.

MR. KRIEGER: How many have been built out?

MR. BABCOCK: Probably 300 to 350.

MR. KRIEGER: And all the utilities are in the roadways and all that?

MR. BABCOCK: Yes, in front of these two particular properties it's 100 percent complete.

MR. KANE: Cutting down any trees, substantial vegetation in the building of the house?

MS. SCOTT: As I understand it, it's a vacant lot.

MR. KANE: Creating any water hazards or runoffs?

MS. SCOTT: No.

MR. KANE: There's an easement that runs through the property but it's not affected by the house so that doesn't come into play. Is there any way to place this home on the property without the variance?

MS. SCOTT: I believe the only way to do it would be to make a smaller home.

MR. KANE: Substantially smaller.

MS. SCOTT: Yeah, I think the size of the home was specifically chosen so that it would be in keeping with the other homes already built in the subdivision.

MR. KANE: Do you know the square footage of it?

MS. SCOTT: Around 2,300 square feet this particular model.

MR. KANE: At this point, I will ask if there's anybody in the public for this particular hearing? Okay, hold on, please. We're just going to bring the sheet so we can get your name and address for the record. Okay, at this point, I'm going to open it up to the public, come up and state anything that you have or ask any question that you have at this point, try not to be repetitive and just state your name and address, speak clearly so this young lady can hear you. Come on up and take a look. Do you have any questions?

MS. DIAZ: My name is Christine Diaz, I live next door to the proposed lot here, my back yard would come into line with this yard, so I don't really know that I have questions so much as just to give you a little bit of history what we're talking about from our perspective, my husband and I purchased this lot and this home based on the recommendation from the salesperson at The Reserve because the lots around us had more land because it would not be as crowded as some of the others that are on quarter acre lots. The lot behind had almost half an acre so we built it specifically with that in mind. Our foundation was poured, they called us in and said we have miscalculated the corner lot so good for you, your foundation was poured, bad for us, we don't know what we're going to do with the lot, had our foundation not been poured, we moved you or made you buy both lots at the time so we cannot, we're first time home buyers and builders, we didn't know what that all meant, but we asked what would it

cost for us to buy the lot. We understood it's a small lot, no one ever got back to us with a price for the lot and we asked more than once. Well now that the mortgage is set and everything else that's not going to happen but at the time there was a possibility, you know, my ultimate certain is that you're talking 13 feet from my back yard and we're not talking side to side homes, if the house side to side was 13 feet, you could live with that but we're talking catty-corner back yard to back yard 13 feet, not a whole lot of privacy, very crowded. And I do wonder about some of the potential hazards that can occur from that, my understanding we looked into getting a shed, a shed has to be 8 feet from your property line but you're going to let a house be 13 feet from my property line so--

MR. KANE: We haven't said anything so you know that a home can be built on this piece of property if they just make it smaller without coming here at all? Just so you understand.

MS. DIAZ: I'm not saying the solution is not to build and I think there has to be a solution, I just don't know what it is. And we have to come up with it together, I think, because otherwise what we bought into isn't what is now being proposed. There are drainage issues on our lot between us and the people behind us, it's not graded properly, you can't mow the grass, you step on it, you sink in. So now we're going to build another property without fixing the problem that exists now. Ultimately our concern is the space, the crowdedness and the aesthetics of the neighborhood as well as any potential hazards that could exist with homes just being too close together. Certainly I don't want you to build a house there that looks like a shack, that's even going to be even worse off than that solution, so we need to look at the big picture and come to the table together with a solution. I don't know if that's going to happen here but those would be my concerns and questions at this point.

MR. KANE: Okay.

MS. DIAZ: I don't think we should pay for miscalculation of land.

MR. KANE: That unfortunately has nothing to do with us here.

MS. DIAZ: I know but just to be on the record they miscalculated the land, you know, so now we pay the price five years from now when they're gone with our property value being affected adversely.

MR. KANE: So unfortunately I have to make it simple, are you for or against this proposal?

MS. DIAZ: I mean I don't know the difference.

MR. KANE: Sometimes it's a yes or no answer, I can't answer that, this is, we cannot tell.

MS. NEVIN: My name is Monique Nevin and I live at 2026 Independence Drive.

MR. KANE: And I'd like you to wait until this young lady is finished please. Thank you.

MS. DIAZ: I would like to see the home if anything set more towards the corner and at a diagonal as possible so that it does provide more room between their back yard and my back yard and that when you pull around the corner you're not looking at the side of a house but you're pulling around and you see the front of that house, aesthetically that might create a smaller driveway, I don't know what that impact is but at least it pushes it more towards the corner and less towards the two homes that are adjacent to the home.

MR. KANE: Thank you. Is that it?

MS. DIAZ: That's it for now.

MS. NEVIN: Monique Nevin, 2026 Independence Drive. I am not opposed to it, I also have the situation behind me with a house that was built particularly for the lot and my only concern is when these houses are going up on back yards that are so small I just don't understand how come there isn't something with the town that the people moving into these much smaller lots aren't given some kind of restriction because they get the house, they get the lot, they think they have all this land and in essence it's only 15 feet off a property line and they go in and, you know, they put up a shed or they want to build out because now the land is theirs and you're kind of stuck, you know, having something so close. And like she said when I went to put my pool in, you know, it had to be ten feet off the house, ten feet from the property line, not everybody honestly goes to the town and goes to a meeting, if they want a shed up, they're putting it up. If they get caught, they get caught. And the person who ends up living with it is us right on top of the property there and you don't want to be the one running to the town saying my neighbor has a shed up 3 feet off the fence, my neighbor put up the fence, you don't want to be the one always doing that but unfortunately we were told one thing and something else is going on.

MR. KANE: Okay.

MS. NEVIN: That's it.

MR. KANE: For or against?

MS. NEVIN: I'm not opposed to it.

MR. KANE: Sir?

MR. WALKER: Richard Walker, 2655 Liberty Ridge. My

concern is if this is approved and I live right across the street from this property and there's going to be another instance of a variance with a home being built on a lot that's too small, so I, if this is approved that's probably going to be approved and I'm against it, if I understand you correctly, it's for this particular home that was spec'd, they can come and build a smaller home.

MR. KANE: Sure.

MR. WALKER: And don't have to go through this procedure?

MR. KANE: Honestly on any lot that's in that subdivision you can expect they're going to try to put a home, it's already been approved for building, just a matter of what size goes on there and I guess this came to light because of the error they made over on your property, I'm not sure on the other parcel because we're not there yet, but I think that's why it's come to light with that thing, they're trying to correct it this way.

MR. WALKER: I would, right now I'm opposed to it if it were a different home, if they were to put a home that fit on the lot as opposed to trying to put a bigger home that does not fit just to keep up with the other homes I would not be opposed to it. But currently they're trying to squeeze a big home in a small lot, it's not going to look good and I agree that we're the community, they're in for a period of time, they're going to make their money and then they're out, they're going back to their community and they want their community to maintain a certain aesthetic pleasure, they moved to that community because they wanted something particular in their community. We want something particular in our community. We don't want homes jumbled together so I'm on the record as saying I'm opposed to it because I see, I don't want this to

set a precedent.

MR. KANE: Thank you.

MR. PERCY: I'm Piere Percy, I reside at 2658 Liberty Ridge, I too am opposed to this entire idea. We have a letter one of the other neighbors prepared and we had people sign it.

MR. KANE: We'll have this read into the record. To the Town Board of New Windsor, 10/24/05, we're writing this letter to inform the Town Board of New Windsor Zoning Board Department that we're strongly opposed to the proposed variances for the addresses of 2029 Independence Drive and 2657 Liberty Ridge Road in the development, The Reserve. These lots are much smaller than the standard .25 acre lots of the other homes in the development. Furthermore, the homes proposed are three bedroom homes compared to the four bedroom homes throughout the development, building smaller homes on these lots will decrease the value of surrounding homes and will simply look cramped. There will be 400 homes in development when it's completed. Does the builder need the profits from two more homes that range from 2,500 to 3,000 plus square foot? The large majority of these homes are on quarter acre lots, not very big for the size homes that are being built. Moreover, they're tightly packed with four homes to an acre. We would greatly appreciate not squeezing anymore homes in on even smaller lots. Please take the feelings and opinions of the neighbors surrounding these lots, after all, we're the residents that are impacted the most. Thank you for your time and consideration, Mr. and Mrs. James Berkowitz, 2028 Independence Drive and I show 16 signatures of residents in that particular neighborhood. Thank you, sir.

MR. PERCY: I have some more information to provide. I have some serious concerns. Basically, I would be, if you look at the triangle, this would be my property

right here, the concern that I have is this, this subdivision was divided back in the '70s, the builder made an error, why should we be penalized for that? Personally, I feel I'm being cheated because I was offered .6 acres and I paid a premium for that, upon closing, I only got .4 acres, that's an issue I have to resolve. I will not go quietly. They already know my feelings. I wrote them a nice letter about that, they have to address that issue first. There's the issue about the easement on the water, the water district they did a very poor job of grading the place, I have water in my basement which I had to address last week. Whenever it rains even when people water their lawns I have a pool in the back of my house, I have this lake in the back of my house between our house and the Diaz house, we can't even walk back there. My kids couldn't play football there yesterday. I was afraid one of them was going to sink but, it's very muddy back there, the water wasn't, the drainage wasn't treated properly and they told me well, if you put grass on it, grass will absorb it. No, it hasn't done that at all. The water stays there, they have to address that. And one other concern that I have is they have a drain right here, one of the drains are right here, well, the house, the way the thing is done there's no way anything was going to drain into this without going into these people's property.

MR. KANE: Coming back down into this property in here?

MR. PERCY: Yeah because it slopes down, you can see it from the picture the whole property slopes down, I don't see why she should be rewarded for this mistakes, I'm missing .2 acres right now and I'm not pleased, they told me I have .57.

MR. KANE: I understand but this board can't do anything about that. All this board is here is to rule on the variance for what they're asking for in building that particular house so in this instance it's 17 feet

because they need 30 in the back and I believe they have 13.2. If we turn that down, that's, you know, which I'm not speaking for everybody here, just understand they can go in and build any house on that lot they want to as long as it meets whatever the zoning regulations are. So I just want to state that.

MR. PERCY: All right.

MR. WALKER: I have a question, sir, if they did not provide the proper acreage or space.

MR. KANE: Has nothing to do with this board.

MR. WALKER: I understand but I'm trying to understand how can they be allowed to build another home when that might impede on the actual property?

MR. KANE: It's a legal, honestly, a legal question for them, you know, and the only thing I can say you have to get a lawyer, go to court and have them stop building until you settle the issue, that would to me just as a citizen that's the only way I can see doing it. There's no town function that I know, correct me if I'm wrong, that can stop them from doing it because it's a legal piece of property right now so if there's a discrepancy on how much land belongs to one person not to the other that's a civil thing that needs to be taken to the courts.

MR. WALKER: Just wanted to clarify.

MR. KANE: It's a project that takes time for everything to go through, so if we deny them they could take that other route if they wanted to and in this day and age they probably would.

MS. DIAZ: Ultimately that's part of my concern is that if this is denied then they come back and say we'll show you and they build a ranch, that's not for you to

decide, I know, my question for the representative is you said the house was 2,300 square feet?

MS. SCOTT: As far as I understand to be, yes, I understand there's a couple of models.

MR. KANE: Also so you guys know this young lady wasn't here for the original proposition, I don't think she's got a hundred percent of the information at this point or at least personal knowledge.

MS. DIAZ: Well, I feel for you, that's not my, but so it's 2,300 square feet to your understanding and it's called a Laurel, do you know is the Ashbrook model smaller than the Laurel?

MS. SCOTT: I'm not sure, I'm sorry, I don't have that information.

MS. DIAZ: Because I think that would be part of the solution would be to look at one of the options to build the home that aesthetically still meets the community standards can be pushed a little further to the street away from the Percys and our property and still meet your needs of having a home there.

MR. KANE: Thank you.

MR. PERCY: I have one more point to make, well, one thing you mentioned setting up a standard in the community, the aesthetics and stuff, if one of the houses is cramped like this we moved from the Bronx, we didn't move all the way up here to have houses on top of houses on top of houses, they're building 500 of those things, they should finish one house first for once. All right, that's all I have to say.

MR. KANE: Thank you, sir. Anybody else for this particular hearing? At this point, I'll close the public portion of the hearing and bring it back to the

board. There seems to be obviously a lot of problems with the neighbors going on there, the only thing that I can offer as a resolution if you want and this would be totally your decision that is if you wanted us to table the vote on this until that, you can either get more information or maybe come up with a different design, speak to the neighbors. I will offer that to you or we can just go ahead and proceed with a vote on this particular property and go for the next one of which I'm assuming we're going to have the same reaction. That would give you, I just, you know, I want to offer you something to maybe work something out with the community over there that might be aesthetic for both parties involved or we can just go ahead with a vote.

MS. SCOTT: I think at this point I would like to hear from the board as far as what their opinion is on it and we'll go from there.

MR. REIS: Do you have a rendering or photo of what the intention of the builder is?

MS. SCOTT: The actual home itself?

MR. BABCOCK: I have one in the file if you'd like to see it.

MR. REIS: May we see that?

MS. SCOTT: I understand it will be similar as far as shingles, siding and coloring?

MS. LOCEY: Can I see the letter submitted by the residents?

MS. GANN: I was asking whether or not there are other homes with a different design less than 2,300 square feet that could possibly go into that lot.

MR. BABCOCK: Well, in talking to Marvin, he had about five different models, I can only assume he picked the smallest one. We told him at least one, I'm sure this board was going to ask that question, I mean, I don't know whether we did at the prelim or not but I don't know that for a fact, no.

MS. LOCEY: And we have a conflict in that some of the people are requesting a smaller size home so it is less of an impact on the homes surrounding them yet that letter indicates most homes in the development are 2,500 to 3,000 square feet and that the developer is now proposing 2,300 square feet or a three bedroom house as opposed to a four bedroom house and they're concerned that that will reduce the value of their home. So we have some people asking for a smaller size house and some people opposed to the smaller size house he has already proposed, that's why I wanted to look at that letter again.

MR. KANE: Right.

MR. REIS: This proposal is for a two car attached garage, perhaps part of a compromise might be in the footprint might be for a one car garage to get it more within the side yard.

MS. LOCEY: One of the standard questions that we review here on this board is will it cause any drainage problems and the gentleman whose house is adjacent to says he already has a drainage problem, now I don't know if we should be asking is this going to exacerbate that, make that existing problem even more.

MR. BABCOCK: Well, for your question the two car garage is on the wider end of the house that meets the setback.

MR. REIS: Perhaps flip it, Mike.

MR. BABCOCK: I guess.

MR. KANE: Just understand this, this young lady's not capable of making those kinds of decisions so basically--

MR. BABCOCK: The other thing is that these houses are situated and the driveways have to go where they are, it's all to do with the 911 numbering of the houses, the entrances of the driveways and which way the house faces, they don't have a choice on that, it has to be done that way. As far as the drainage, I didn't know that these people had a drainage problem, I can tell you that I will get involved in it now that I know they do. If this board makes any decision on this tonight I don't see why they can't lock the drainage into it, take care of the people's drainage.

MS. LOCEY: Also one of the ladies who spoke here this evening suggested that the house be relocated closer to the road or the sidewalk so it's further away from the two existing homes there. Will that make the amount of variance they need larger than what they have already requested?

MR. KANE: You also have to think of line of view since they're a corner property.

MR. BABCOCK: All the utilities are in the front, I don't know, I'm sure the house could be shifted, I'm sure the house could be turned so they would require a smaller rear yard variance but they would require a front yard variance.

MS. LOCEY: Whereas they don't need the front yard variance where it's proposed to be located on the lot now?

MR. BABCOCK: Right.

MR. KANE: I think what I'm going to do is I'm going to use my prerogative and make a decision that I would like to request from a board member a motion to table this particular hearing, I will make that decision and allow you to get back to the company, tell them what went on tonight with their neighbors and the problems that they have, offer them a couple of, tell them to take a look at it and then we'll come back and open it up probably the second meeting in November, there's only one meeting, it's on the 14thh, November 14th. We, everybody is invited to come back, we will not be reopening the public portion though, that's closed, if we could, could we get a copy of the names and addresses of the people that were here tonight and fax them over to them so that they have them so maybe they can talk to the people that are in that area?

MR. BABCOCK: Mr. Chairman, are you looking to spin the house because I'll talk to them myself, are you looking to spin the house?

MR. KANE: Well, my opinion and I don't live there so I don't know what that's worth, okay, I live in Butterhill, we have our own problems, my opinion is they're going to put something there, I don't know any construction company that wouldn't build on a legal piece of property, so I prefer to see something that's more that goes with the neighborhood than a builder coming in and saying we'll do it by site and there's a 15 story McDonald's that's this wide, I'd rather go back and let them make that decision. I would prefer they put a house there that goes with the particular neighborhood.

MR. BABCOCK: If they have a model that's smaller than this that would be one if they turn the house because I think the lady that's I'm going to say most affected the one with the 13 foot rear yard there if they were, she doesn't want a smaller house, she doesn't want a little ranch there so--

MR. KANE: Too small of a house is going to change the nature of the neighborhood.

MR. BABCOCK: If they have a smaller model, if not, if this is it, they turn it, require a front yard variance we'll look where the utilities are and get it farther away from that rear property.

MR. KANE: And at this point, I'd like them to address what is going to happen with the drainage going down because if these people who are higher are having a problem that piece of property there is in trouble, just looking at the pictures, I mean, that's, although it's never the same as what you see, they could build up a little, you know, I'm not that smart when it comes to construction.

MS. LOCEY: As proposed, does this rear yard compare to other existing rear yards in the development?

MR. BABCOCK: Well, you know, I mean, just for instance the one that was in here tonight it was a deck and that was requested at 2415 Settlers Ridge and they requested an eight foot six inch rear yard setback, so they want to be, I don't have the file there but they want to be within 8 feet of the rear property line.

MR. KANE: It's tight over there no matter what piece of property you've got.

MS. LOCEY: Just want to be satisfied that the developer has tried everything he can.

MR. BABCOCK: If you look at the sample of the house with Independence Drive, I don't know, I personally and it doesn't count cause I don't live there but I personally don't think it should sit that much angled.

MR. KANE: That's why I want to give them an

opportunity to meet with their neighbors and do that. I had to give you a chance, we have to reopen it again because we have another one, but I have already closed the public so we've got another one to do.

MS. LOCEY: Did we hear how many mailings were sent out?

MR. KANE: Not yet, no, I haven't gotten there yet.

MR. REIS: If we can provide also as long as you're going back to your builder perhaps provide plantings, a buffer in terms of absorption and drainage.

MR. KANE: For the record, how many mailings did we have, Myra?

MS. MASON: On the 5th of October, I mailed out 60 envelopes.

MR. KANE: So I would at this point request the board member make a motion that we table.

MS. LOCEY: I will offer a motion that we table this application for Mt. Airy Estates for their request for a 17 foot rear yard setback at 2029 Independence Drive.

MR. KANE: To be taken up again at November 14th.

MR. REIS: Second it.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

MS. SCOTT: Do you want to hear information back from

us before the November 14 day?

MR. KANE: If you can get us any information to Myra she'll get it to us that would be good.

MR. REIS: Off the record.

(Discussion was held off the record)

MR. KANE: What I'm going to do we have a second home obviously 2657 which we have to hear, we're going to open up, I have to open it up, we have a public hearing tonight, I'm going to open it up and, I mean, it's basically the same statements, the same arguments to a degree on that and what I am going to do is not open the public portion of that hearing until the next meeting and we'll open that particular public portion of the hearing then and then we can rephrase whatever we need to at that point. Does that seem reasonable? Okay.

MT._AIRY_ESTATES_(05-56)

MR. KANE: Mt. Airy Estates request for 17 foot rear yard setback for proposed single family home at 2657 Liberty Ridge in an R-3 zone.

Audry Scott, Esq. appeared before the board for this proposal.

MS. SCOTT: Once again, I'm Audry Scott from the firm of Jacobowitz & Gubits on behalf of Mt. Airy Estates. I understand this is a request for a 17 foot encroachment into a 30 foot rear yard requirement on a corner lot which results in a triangular shaped lot, one corner of the home is what encroaches into the rear yard requirement necessitating the variance.

MR. KANE: Can I ask a question on this particular lot, was there another miscalculation, is that why we need 17 feet here?

MR. BABCOCK: Mr. Chairman, these lots were developed in 1970, I don't think there was and the gentlemen said that there was a miscalculation, I don't think it was in the lots, these surveys were done I think it might have been in what they told them they were getting and what they actually got. These lots have been here this way since 1970.

MR. KANE: Okay, at this point, what I'm going to do is since the statements and all of the arguments are the same as the first particular Mt. Airy Estate hearing I'm going to request the board table this particular motion so that we can hear them both at the same time and give the construction company a chance to get together with the residents of that particular neighborhood. May I have a motion?

MS. GANN: I'll make a motion that we table Mt. Airy Estates' request for 17 foot for November 14th for the

request for the 17 foot rear yard setback for the single family house at 2657 Liberty Ridge.

MR. REIS: Second it.

ROLL CALL

MS. GANN AYE
MS. LOCEY AYE
MR. BROWN AYE
MR. REIS AYE
MR. KANE AYE

MR. BABCOCK: Was that tabled to November 14th also?

MR. KANE: Yes, both on November 14th.

MS. SCOTT: Is the public hearing adjourned until then?

MR. KANE: The public hearing on the 2657 Liberty Ridge will be held at that time.

MR. REIS: Mike, how close is this to the prior application as far as the geography?

MR. KANE: Corner lots.

MR. BABCOCK: How far away you mean?

MR. REIS: Yes.

MR. BABCOCK: I'm not positive.

MR. WALKER: They're across the street from each other.

MR. PERCY: My house is in between.

MR. BABCOCK: It's the end, they've got a double row of houses coming down and it's the end and then a double row of houses and the end.

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MR. REIS: All right, very close, okay, thank you.

MR. KANE: Thank you.

ANGELINA_COLONI

MR. KANE: Request for 17 ft. side yard setback for existing 8 ft. x 20 ft. breezeway attached to existing garage at 39 Hillside Avenue.

Mrs. Angelina Coloni appeared before the board for this proposal.

MRS. COLONI: I'm asking for a variance on my parents' home of which they live there since the 1950's and the situation that I'm finding now and I do have a buyer for it is that I have to ask for a variance for the breezeway and it's not in any way unattractive or anything like that and so I'm asking if you might consider the grandfather clause or whatever you have to say about it.

MR. KANE: Number one, any complaints about the breezeway formally or informally?

MRS. COLONI: No.

MR. KANE: Sounds crazy but I have to ask, cut down any trees or substantial vegetation in the building of the breezeway?

MRS. COLONI: No.

MR. KANE: About how long has it been there?

MRS. COLONI: The house was built like back in the '50s and I have a deed and it's really funny because what they're told not to do is put on animals and hogs and cows and so on, that's how long it's been.

MR. KANE: Was the breezeway part of the home back then?

MRS. COLONI: It was on a little bit later.

MR. KANE: In the '50s?

MRS. COLONI: Yes.

MR. KANE: So according to your testimony, you believe that the breezeway itself actually pre-exists zoning?

MRS. COLONI: I guess so, yes.

MR. KANE: Any easements that you know of?

MRS. COLONI: No.

MR. KANE: And you understand that if the easement passes this board that you will be subject to any regulations from the building department, that doesn't supersede that, okay?

MRS. COLONI: Yes.

MR. KANE: I will at this point ask if there's any public here for this particular hearing? Seeing as there's not, we'll close the public portion of this meeting, I will ask Myra how many mailings we had.

MS. MASON: On October 5, I mailed out 29 envelopes and had no response.

MR. BABCOCK: Just to clarify just a little bit there's a house and there's a garage before the breezeway was built the garage would be an accessory use so there was no setback requirement as it is today. Once they enclosed the breezeway from the house to the garage and attached it now the setback became, that's what actually created the problem only because the house and the garage now are attached. When they were originally built, they weren't. We have records, I don't have them with me and I don't know, I can get them for this board if they'd like but we have an indication that it

was built after '66, that's why we're telling her she needs to straighten it out.

MR. KANE: Does the board have any further questions?

MR. REIS: Accept a motion?

MR. KANE: Yes, I will.

MR. REIS: I make a motion that we grant Angelina Coloni her request for a 70 foot side yard setback for existing 8 x 20 breezeway attached to existing garage as 39 Hillside Avenue.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

JOSEPH_BONURA_(05-50)

MR. KANE: Request for determination of the exact location of any district boundary shown on the zoning map, or use variance to locate a hotel in an R-4 zone at 2975 NYS Rt. 9W. First thing that we'd like to get is your name.

MR. BONURA: Joseph Bonura, Jr., my address is 32 Chestnut Lane, Newburgh. What we're here to do is make not so much make out an application for a hotel is straighten out the zoning line issue which we came across when we were doing our initial survey for the hotel. So when we hired Chazen Companies to do a boundary survey for our property, it came to our attention that half of Anthony's Pier 9 which has been around for a long time was actually in a residential zone. So we did some digging to find out how this happened and to sum it up what we found was back in 1966 we found a map that showed the line between the R-4 zone and the NC zone to be 500 feet off Route 9W. In 1992 when we did our last major addition on the back of Anthony's Pier 9 we have a map, a stamped map from the surveyor that shows that the R-4 line was somehow moved 400 feet back from 9W which was still okay, we, that's the setback that we had been working with all these years. And then in 2005 when we did the new survey somehow the line moved to 200 feet back towards 9W which puts it directly through the middle of our building. So we're here to get some clarification, we were never notified of any zoning line change, we never requested a zoning line change and we're here to get some clarification that that line is actually at the back of the building where we have always thought it was and I have some maps here. I also have an area photograph to show the building that's already been in existence and I will answer any questions.

MR. KANE: Can I see the map, Joe?

MR. BONURA: Sure, this is the 1992 map, it shows Pier 9, this is Anthony's Pier 9, that's Route 9W and as you can see what we saw was the zoning line would be right here, this dashed in line which runs passed this piece of property and also continues through the next piece of property which in the future we're planning on building a hotel so this is what brought our attention back to the problem now. You can see that if you add up this footage here you have 202 feet and 192 which is the 400 feet that we had always thought we had. And then I will show you the map that we just got earlier this year, this is it, we're in the same way, here's 9W and here is the zoning line going right through the middle of the building, this is where we thought the zoning line was always and that's what we had been working with, somehow, we don't know how, it showed up here.

MR. BABCOCK: Mr. Chairman, we're pretty sure in research that we did for the town in 1993 they did a rezoning along 9W in spots throughout the town line all to change from R-4 to NC and everywhere that they changed was depicted at 200 feet and we think that when they did this they just put all the zoning at 200 feet on the map so when it came from the engineering department down to the computer guys to change the maps and put this NC zone in different areas along 9W that was all 200 feet so they changed every NC zone to 200 feet cause there was never any request on this piece of property nor would it make sense that this, the zoning line go through the building.

MR. KANE: Never mind.

MR. BABCOCK: In the back of this building there's a car garage that he went to the planning board to get approval to build, he would have never got that approval if the zoning was R-4, you can't build it there.

MS. LOCEY: So the map is incorrect?

MR. BABCOCK: Yes.

MS. LOCEY: The written zoning is correct?

MR. BABCOCK: Yes.

MS. LOCEY: Just when it was depicted on the map the lines were written in the wrong place and that's correctable on our part, nothing to do with him?

MR. BABCOCK: That's right and we have the original map that shows that it was 500 feet off of 9W, we have that in our file.

MR. KANE: Let me ask if there's anybody in the public for this particular hearing? Okay, at this point, I might as well open it up to the public.

MR. FOTI: Charles and Mary Louise Foti, F-O-T-I.

MRS. FOTI: So this is the back of Pier 9?

MR. BONURA: Yes.

MR. FOTI: I believe our property is on right here. We're only here because we got this letter, we didn't know anything about this.

MR. KANE: Basically what happened, let's show you this one, this is 1993, they're supposed to be back here from that garage from this point going straight back, here it shows it going right through the building so instead of this line which is where it should be back here they just according to Mike they went through and just on the computer popped 200 feet, 200 feet, 200 feet.

MR. BABCOCK: Sometimes Mr. Chairman sometimes the

zoning goes with property lines. If you look at this map you'll see that the zoning line bounces back and forth, this is probably easier for you to see, see it travels with the property line at some points wherever it doesn't it's measured and in '66 you could see that this is clearly 500 feet and then the zoning got changed along here so anywhere it didn't run with the property line it was 200 feet so this line see how this is dark this should be white, this piece right here and the line should up here.

MR. KANE: So what they're here tonight for is just to get an interpretation stating that the zoning line is right there and not as it shows on this map here back where it's supposed to be in 1993.

MR. FOTI: So where they want to build the hotel this is a future use?

MR. KANE: Future project meeting or whatever, has nothing to do with this, this is just clearing up the zoning line.

MR. FOTI: I just didn't know it's because we're neighbors.

MR. KANE: Anybody within 500 feet gets one.

MR. BABCOCK: We found a section in the codes cause we tried to do this, I went to the attorney's office and said how do I do this, how do we change the zoning line, we need a request and he said you've got to find something, so we looked in the code and it said the zoning board has the right to determine where a zone line is if there's a dispute and that's why they're here.

MR. KANE: Good.

MR. FOTI: Aren't they here to ask for a variance?

MR. BABCOCK: No.

MR. KANE: Just an interpretation as to where the zoning line is.

MR. KRIEGER: The variance request would only be triggered if the interpretation that they asked for was denied.

MR. BABCOCK: In theory if this was denied they'd need a variance to keep Pier 9 there.

MR. FOTI: And if this is not denied, where does that leave them?

MR. BABCOCK: They get to keep Pier 9.

MR. KRIEGER: Visually just exactly where they are now.

MR. KANE: Basically it changes nothing except to then legally this line is where it's supposed to be.

MR. FOTI: Where are we on here?

MR. BABCOCK: Here, this is Fay right here.

MRS. FOTI: What's an R-4 zone?

MR. BABCOCK: Single family residential.

MR. KANE: If the planning board refers them back here for anything for the hotel, you'll get a notice on that.

MR. FOTI: Do you know if there's supposed to be a road? We were told when we bought this house in '79 we were told there was supposed to be a road to connect and it's never come yet all these years later.

MR. BABCOCK: There's a strip of property there like it was supposed to be connected, just never been done.

MR. FOTI: It's an open issue still whether it's going to be done at some point?

MR. KANE: I don't know.

MR. BABCOCK: I don't think the town is going to build it.

MR. FOTI: Thank you.

MR. KANE: For clarification do you have any opinion on this interpretation at all?

MR. KRIEGER: In favor or opposed?

MR. FOTI: No opinion at all either way.

MR. KANE: Thank you. At this point, anybody else? We'll close the public portion and Myra?

MS. MASON: On October 5, I mailed out 23 envelopes.

MR. KANE: Back to the board, any further questions?

MS. LOCEY: In 1993, what was the correct distance?

MR. KANE: Four hundred feet.

MS. LOCEY: That's 400 feet back from Route 9W?

MR. KANE: Correct.

MS. LOCEY: From Route 9W back 400 feet is considered what zone?

MR. BABCOCK: It's the zone behind it at 9W is NC, Neighborhood Commercial.

MS. LOCEY: And R-4 is behind?

MR. BABCOCK: Yes.

MR. KANE: Where the zoning line is it's putting R-4 halfway through the building.

MS. LOCEY: I understand.

MR. KANE: Any other questions, guys? Can I have a motion for an interpretation?

MR. REIS: Make a motion that we make an interpretation that the district boundary shown on the zoning map shows 400 feet from 9W.

MR. KANE: As per the 1993 map for this particular piece of property.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

MR. BABCOCK: Mr. Chairman, I don't know if 400 feet is the right number, I think we should put at the rear yard of the Pier 9 property cause it's not exactly 400 feet, it's at 12.

MR. BONURA: It's 395.

MR. BABCOCK: We want to say it's this long at the rear cause this is actually R-4 residential lots, we don't want it encroaching on those lots.

MR. KANE: Right, so we're going to say it follows but this is on their property, right, so it doesn't really follow the property line.

MR. BABCOCK: No, this is existing, we're going to have to deal with that some other time.

MR. KRIEGER: Well, even if the line encroached a little bit on the R-4 lot, it's still considered the--

MR. BABCOCK: They're not built on yet.

MR. KRIEGER: Still considered the zone that the majority of the lot is in, aren't they?

MS. LOCEY: Why don't we just amend the motion to make it as identified in the 1993 zoning map.

MR. KANE: We'll make that amendment as identified in the 1993 zoning.

MR. BABCOCK: Not 400.

MR. KANE: Right, all right, so everybody's in agreement we take the number out.

MR. REIS: Thank you.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

MR. BONURA: When you say this particular piece of property, there's really two pieces of property it applies to the line.

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MR. KRIEGER: All pieces of property.

MR. BONURA: All pieces of property touching the line.

MR. BABCOCK: Yes.

MR. KANE: Yes.

MR. BONURA: That's what I wanted to make sure. Thank you.

JEFFREY_EHLERS_(05-49)

Mr. Jeffrey Ehlers appeared before the board for this proposal.

MR. KANE: Request for 27 ft. rear yard setback for proposed house deck, pool deck and pool at 342 Butternut Drive. Tell us what you want to do, sir.

MR. EHLERS: I'd like to remove the existing deck, replace it and have an addition to that deck, a larger deck I should say.

MR. KANE: The size of the deck that you're planning on building?

MR. EHLERS: It would be I guess 12 x 27.

MR. KANE: Is that--

MR. EHLERS: The deck is 12 x 12, I want to remove that, have it the same width but just go out to meet the far end of the pool.

MS. LOCEY: So it would be 12 by what?

MR. EHLERS: Twenty-seven.

MR. KANE: Is this going to be one continuous deck or are you going to have a higher deck going down to the pool level deck?

MR. EHLERS: Yes, it will drop down about three stairs to meet the pool level.

MR. KANE: And is there going to be a, well, let's do the decks first, cut down any trees, substantial vegetation in the building of the deck?

MR. EHLERS: No.

MR. KANE: Creating any water hazards on runoffs in the building of either deck?

MR. EHLERS: No.

MR. KANE: Any easements in that particular area?

MR. EHLERS: No.

MR. KANE: You're on Butterhill, right?

MR. EHLERS: Yes.

MR. KANE: The upper deck going down to the lower deck you're going to have a self-closing, self-latching gate or some kind of impediment?

MR. EHLERS: Yes.

MR. KANE: And you have to have that by law.

MR. EHLERS: Yes.

MR. KANE: The deck will be similar in size to and nature to other decks in your neighborhood?

MR. EHLERS: Yes.

MR. KANE: Any questions? On the upper deck you have a pair of sliders according to this picture coming out so the upper deck is necessary for safety issues?

MR. EHLERS: Yes.

MR. KANE: At this point we'll ask if anybody in the audience is here for this particular hearing? Seeing as there's not, we'll close the public portion, ask Myra how many mailings we had.

MS. MASON: On October 5, I mailed out 65 envelopes and had no response.

MR. KANE: Bring it back to the board, any other questions?

MR. REIS: Accept a motion?

MR. KANE: Yes.

MR. REIS: I'll make a motion that we approve Jeff Ehlers' request for 27 foot rear yard setback for proposed house deck, pool deck and pool at 342 Butternut Drive.

MS. LOCEY: I will second that motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

CUMBERLAND_FARMS_(05-58)

MR. KANE: Request for variance from Section 300-73(B)(3) which limits extensions of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint at corner of Caesar's Lane & Rt. 94.

MR. OLSEN: My name is Richard Olsen from the law firm of McCabe & Mack and this is Don Vandergin (phonetic), the regional manager from Cumberland and Bob Spiac (phonetic) is the design engineer with Bohler Engineering. Mr. Chairman, just for some procedural matters to get out of the way when we were also last were here your counsel had asked me to provide for the board's ability to hear this application I believe I did that I think Mr. Krieger is satisfied with that. We had a subsequent conversation with regard to the standard that will be applied to this which I believe we have now come to a determination that the area variance standards under 267 (B)(3) are the applicable standards for this application. I will summarize.

MR. KANE: Okay, we'll change it around a little bit. At this point, I will open it up to the public, give a quick summary to these guys and if they have any questions, we can get them asked. When you ask your questions, I would like you to give your name and address, speak loud enough for this young lady. Please do not be repetitive. Thank you.

MR. OLSEN: The existing site is owned by Cumberland Farms since 1975. Currently there's a small brick building at the front of the property approximately 1,590 square feet. We have a canopy directly on the property line which has two gas pumps. Under the current standards the planning board would have the ability to grant a 30 percent expansion given the criteria under Section 373 of your code that would allow us to build an approximately 2000 or add 480

square feet to the existing building. When we initially spoke to the engineer, one of the safety concerns that they raised was the fact that our current curb cut is too close to Route 94. Therefore, they said that any site plan is going to require us to move the curb cut towards the rear of the property. Therefore, we couldn't use the existing buildings, so the proposal is to raise and rebuild the entire site. Our proposal is to bring a 3,600 square feet building back so we can make use of the entranceway to bring back 24 feet from the street line the canopy to allow the additional pumps to be placed in there. The reason for the additional size here and major question that was raised by this board at the last hearing was do we fit the criteria of the gasoline stations in other zoning districts within the town. I can tell you and I have for the board a summary of the zoning analysis from your zoning code, the bulk requirements for the AP, C and the NC zones each contain gasoline service station. The only one that we cannot meet in all three of them is actually the front yard setback, we're sitting back 24 feet, your AP zone requires 30, your NC zone requires 40 and your C zone requires 60. As far as the rear yard setback which we view to be more important of the setback issues, your NC zone and AP zone both require 15 feet, we're providing 25 feet. It's your C zone, your design shopping zone that requires a 30 foot setback, again, we're asking for 25. As far as the design of the site, it's being placed back to utilize the new curb cut that they wish, we do recognize the fact that there are residences to the rear, there's a substantial tree buffer which we're going to have to cut into but the buffer is a large part off of our property so we're maintaining trees on our property and obviously we're not touching any trees on the adjoining properties and of course we'll work with the planning board to ensure sufficient landscaping and privacy in the rear of the building. Other than that, we do meet the criteria of the zoning where the use is permitted.

MR. KANE: Okay, questions.

MR. ALDEBO: Louis Aldebo, I'm at 2 Hart Way. I don't know if the town is aware there are a lot of accidents here constantly, I don't think there would be the problem. Most of the problems are coming out over here, I suggest maybe a light here at Caesar's Lane, I don't know if that's possible. Will this be open 24 hours?

MR. VANDERGIN: I don't know that that's been determined. Generally when we do this type of facility we look at that and see if it's a viable option.

MR. ALDERBO: It's a neighborhood, I'm against 24 hours. Bright lights, I don't know how bright the lights are going to be there, you know.

MR. OLSEN: Assuming we get passed this, we'll have to go to the planning board and address issues such as lights, traffic and these are concerns we have to address on any plan we bring forward.

MR. SCOTT: My name is Bill Scott. Looking at that map here, I own the adjoining property which is a laundromat right here, I've been having nothing but problems with vandalism on my building due to the customers going into their building, buying merchandise, coming out, cutting through the alleyway and down the back into the apartment building in the back over here and throwing garbage and vandalizing my building and so forth plus coming out of the store coming down the little embankment right there cutting in front of the laundromat going over to the apartment buildings on the adjoining side, throwing garbage all over the place, nobody gives a damn so I'm basically objecting to the project.

MR. KANE: Next?

MR. KRILL: Miro Krill, M-I-R-O K-R-I-L-L, 2 St. Ann Drive. There's a lot of kids hanging out in the woods behind the Cumberland Farms at nighttime, place stays open until 12, they went from Upskate right down the road, they started hanging out in the Cumberland Farms and same thing it's a high traffic area and come out of my street, St. Ann's diagonally across the street is very tough, lot of accidents there, got to be some kind of like I said traffic light or something.

MR. KANE: I think that's a state road so that would be either the county or state puts lights, that's nothing we would do.

MR. OLSEN: That's State DOT.

MR. KANE: It took them years and years to get a light and 9W. Okay, any other things to ask?

MR. SCOTT: Another thing if this thing did happen to go through I'd like to see the whole perimeter fenced off to avoid going from one end to the other, they want to go into the place, they have to come through the main street and come in, not through the back entrance which would be coming through the back of my property coming right on through.

MR. KANE: Okay, anything else?

MR. SCOTT: Well, I'd like to see, I see you've got a site plan and everything fine but I still unless they can come up with another answer, I don't think it's a good idea at this time, you've got 1, 2, 3, 4, you've got six pumps in there. Like this fella said before all the bright lights in the street, there's accidents, direct traffic flow's exceptionally high, we don't need more traffic flow, if you put a gas station, we don't need it.

MR. KANE: Thank you. Next?

MR. MORALEZ: Juan Morales, 1 St. Ann Drive. Right now they have like speakers like a P.A. system that's real loud, we can hear it two blocks away from the gas station. I'm pretty sure you're going to take care of that because like an antique system with speakers that when they say pump number 3 you can hear it two blocks away.

MR. KANE: I stop there every morning, I know exactly what you're talking about. Go ahead.

MR. BABCOCK: They have volumes on those, I mean, I'm sure if somebody was made aware of that they can take care of that.

MR. KANE: Not really an issue of this particular board. A lot of that stuff is going to go through the planning board.

MR. MORALEZ: But my main concern is about the traffic light, the thing is there's a lot of accidents over there, people coming out of the gas station trying to come in making a turn to Caesar's Lane trying to go into St. Ann Drive and there's a tractor trailer going by.

MR. KANE: At this point, Ceasar's Lane should be a good option for a light there since we've built up so much and have so many people in the area but again nothing that we can address right here.

MR. MORALEZ: All right.

MR. KANE: Any other questions at this point? Okay, I'll close it to the public. Thank you, gentlemen, and bring it back to the board.

MR. OLSEN: If I could, the issues that these gentlemen

raised this evening are all vital issues that need to be addressed, they all are I believe planning board issues. We obviously are seeking to make a major improvement to the property landscaping, I mean, the issues that I've heard about fences, those are all things that we can do.

MR. KANE: I'm very big on the fence coming down between the laundromat and if you can behind where the grass is on that area I think that security is major, I really do.

MR. OLSEN: Assuming that this board grants us the ability to move forward, we can then go to the planning board, these issues, we'll receive those at the planning board application, that's where the specific issues of traffic, the particular layout and the noise issues, any light impacts, security and obviously, I mean, Cumberland isn't going to make this type of investment--

MR. KANE: When we vote, I'm going to be specific about the fence going around.

MR. OLSEN: All right and at that point the planning board would have the final say as to where it goes.

MR. KANE: Correct.

MR. OLSEN: But you would want to see a security fence surrounding the property?

MR. KANE: I go there every day so I can see the problems, I can see the kids cutting through the back and cutting through there and I do believe that it's--

MR. OLSEN: From Cumberland's standpoint once we make that investment we don't want people coming through dropping garbage, it's a substantial investment the company would be making, they want to make sure they

take care of these things.

MR. KANE: Okay, got a couple things to do since I closed the public portion, Myra, how many mailings did we have?

MS. MASON: On October 5, I mailed out 48 envelopes and had one response.

MR. KANE: I have one response, I will read it into the record right now. This is to inform you that I oppose the request for a variance to permit 127 percent increase in the footprint of Caesar's Lane and Route 94 in the Town of New Windsor. My opposition is based on the anticipated increase in traffic at this already busy intersection as well as quality of life issues in residential areas surrounding the town. Very truly yours, Stephen T. Litler, Jr., St. Ann Drive.

MR. SCOTT: You got my name there too, William Scott?

MR. KANE: Yes, sir, the public portion is closed so no more comments please. Thank you. Now the existing curb cut that's all going to be--

MR. OLSEN: The two on Route 94 are not going to change, it's the curb cut on Caesar's Lane which is very close to the Route 94 intersection right now. We have been directed by your town engineer to move that down, that's where we're showing it now subject to whatever revision of course that would appear during the planning board process that is of course the town road and the town has the final option on that.

MR. REIS: Still going to be two ingress egress on 94?

MR. OLSEN: The curb cuts would not be changed whether the planning board decides to limit one for increase egress, that's not yet been decided, planning board obviously would have some indication on that from DOT

and off course it has not gone through the DOT review yet either.

MR. KANE: The pumps that's all going to be a canopy over it?

MR. OLSEN: Yes.

MR. KANE: Illuminated?

MR. OLSEN: There will be illumination, we'll work with the planning board with whatever recessed lighting and whatever wattage is appropriate for planning board determination.

MR. KANE: And I didn't see you don't have any sign variances?

MR. OLSEN: We're using the existing signs.

MR. SPIAC: Yeah, relocate the existing sign on that and there will be some new signage on the building and canopy which is compliant with code.

MR. KANE: Good, okay. Any further questions?

MS. LOCEY: How large of an extension are you requesting, in other words, you could have up to a 30 percent, what percentage are you requesting?

MR. OLSEN: It's 126 percent increase, we're permitted 30 percent through the planning board, as I said, that would give yourself the ability to put 478.6 square feet onto the existing building.

MR. KANE: How big is the building now?

MR. OLSEN: 1,595 square feet.

MR. KANE: And how big is the building that you're

proposing.

MR. OLSEN: It's 3,600 and that figure 127 is what's calculated by your town engineer.

MS. LOCEY: So double.

MR. OLSEN: Yes.

MR. REIS: That's the same proposal and square foot as the preliminary?

MR. SPIAC: Yes.

MR. OLSEN: Right, we had originally come before the planning board for an informal review for approximately 4,000 square foot building which we did reduce down to 36, this is the one we brought in to this board back in December.

MR. SPIAC: The original was 4,200, 4,185.

MR. REIS: If I can make comment the proposed increase in this building is not going to create more vandalism, it will clean up the property, it will make the traffic flow even better. All your comments are very valid and we understand that but the fact that the business exists and will continue to exist, any improvements that they do are going to improve the area, fencing is going to be one of the issues that somebody brought up so we're going to try to make this community friendly as much as we can, all right, all these issues are there now so they're not making these issues, they already exist, okay. With this 127 percent increase economically it would make sense for the owners to create a 2,800 or 3,000 or something that's not quite as large.

MR. OLSEN: Well, we actually ran some of the scenarios of this seeing if we can make the site more compact,

when you start going below 3,000 square feet the economics doesn't work. We looked at 3,200 square foot building and we still need the same setback to go back to the property line in order to make the traffic flow work just because you reduce the size of the building doesn't mean you reduce the depth of it. So obviously it's easier from an operational standpoint, he'll tell you that 3,600 square feet is probably on the small end of these nowadays so from the standpoint of the operations even if we do reduce it we're still looking for the setbacks are the ones that we're really looking at. We have to go back towards the property line in order to make this facility work correctly from a planning standpoint.

MR. KANE: Okay, any other questions?

MR. REIS: You have enough side yard here, not to further debate this or challenge what you're saying, counselor, but if you made the building 90 feet long and 35 foot wide rather than 45 by 80 still have basically square foot and you wouldn't even need a variance?

MR. OLSEN: Well, we need a variance anyway because this is a non-conforming use, anything that we expand above we'd have to come to this board.

MR. KANE: That takes away parking.

MR. OLSEN: From a site layout, it doesn't work, from the parking, the trash enclosures, the ability to fully access.

MR. REIS: All these things have been considered?

MR. OLSEN: Yes.

MR. BABCOCK: The lot is over an acre which is pretty big for the gas stations that we do see that come in

and they're in compliance with all the setbacks with this building, what they're not in compliance with is that the zoning ordinance says that if you remodel your building in a non-conforming zone, you can only expand 30 percent.

MR. KANE: Any other questions? I'll accept a motion. Please remember to include fencing.

MS. GANN: I will offer a motion that we grant Cumberland Farms for their requested variance from Section 300-73 (B) (3) which limits extensions of pre-existing non-conforming use to 30 percent. The applicant is seeking approval from 1,590 square feet to 3,600 square feet at Caesar's Lane at the corner of Caesar's Lane and 94 in a PO zone and also that they're to include the security fence to surround the property.

MR. KANE: On the south side of the building and on the back of the building.

MR. BABCOCK: The back of the building is the south side, Mr. Chairman, the west and south.

MR. KANE: I'm over 50, you know.

MR. BABCOCK: Just so that we're clear.

MR. REIS: Second it.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

MR. KANE: Motion to adjourn.

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MR. REISS: So moved.

MS. GANN: Second it.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth
Stenographer